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Attorney for the Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

FESTUS O. OHAN,)	
)	
Plaintiff,)	Case No. 3:22-cv- <u>00182-JMK</u>
)	
vs.)	(State Court No. 3AN-21-00952SC)
)	
CHIEF OF LEGAL STAFF, GREG)	
SHMIDT OF U.S. DEPARTMENT OF)	
EDUCATION,)	
)	
Defendant.)	

**NOTICE OF REMOVAL FROM STATE COURT
(FEDERAL OFFICER REMOVAL)**

Pursuant to 28 U.S.C. § 1442 and 28 U.S.C. § 1446, Defendant Gregory
Schmidt, Chief of Staff for the Office of the General Counsel, U.S.

Department of Education,¹ through counsel, removes this action from the District Court for the State of Alaska, Third Judicial District at Anchorage, to the United States District Court for the District of Alaska. In support of this Notice of Removal, Defendant avers as follows:

I. THE STATE COURT ACTION

1. On or about July 22, 2021, Plaintiff Festus O. Ohan, pro se, filed a complaint in the District Court for the State of Alaska, Third Judicial District at Anchorage, styled as *Festus O. Ohan vs. Chief of Legal Staff, Greg Shmidt of U.S. Department of Education*, Case No. 3AN-21-00952 SC. A true and correct copy of the complaint is attached hereto as Exhibit A.

2. The allegations in the complaint appear to concern Plaintiff's grievances against Defendant regarding the offset and garnishment by the Internal Revenue Service of over \$7,000 in 1993 and a stimulus check in the amount of \$1,200 in 2004. Ex. A.

3. Plaintiff's claims against Defendant necessarily arise from the work that Defendant performed in his official duties with the U.S. Department of Education, which reinsures and subsidizes student loans under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §

¹ Mr. Schmidt's name is misspelled "Shmidt" in the state court complaint.
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1070, et seq.; such loans, when in default, must be referred to the Treasury Offset Program under the Debt Collection Improvement Act of 1996, Public Law 104-134.

II. THE REQUIREMENTS FOR REMOVAL ARE SATISFIED

4. This Notice of Removal is brought under 28 U.S.C. § 1442.

5. 28 U.S.C. § 1442(a)(1) provides, in pertinent part, that “[a] civil action or criminal prosecution that is commenced in a State court and that is directed against . . . any officer . . . of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office,” may be removed to a United States District Court.

Removal is authorized under this provision because Defendant has been sued for acts necessarily taken in his role as an official with the U.S. Department of Education. *See Willingham v. Morgan*, 395 U.S. 402, 409 (1969) (the “color of office” test is satisfied if there is a “causal connection” between the charged conduct and the asserted official authority). In addition, Defendant may have one or more colorable federal defenses to this lawsuit, including immunity. *See Mesa v. California*, 489 U.S. 121, 133 (1989) (immunity is a federal defense).

6. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) following Defendant’s receipt of the complaint on July 8, 2022.

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7. This Court embraces the locality in which the state court action is now pending, and thus is a proper forum pursuant to 28 U.S.C. § 1442(a) and 28 U.S.C. § 1446(a).

8. No previous application has been made for the relief requested herein.

9. This Notice of Removal is being signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. See 28 U.S.C. § 1446(a).

10. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on all other parties who have appeared in the state court action and is being filed with the District Court for the State of Alaska, Third Judicial District at Anchorage.

11. Pursuant to District of Alaska Local Rule 3.1(a), a copy of the civil cover sheet is being submitted herewith.

12. After filing this Notice of Removal, Defendant will be lodging with the Court a copy of all process, pleadings, and other orders in the state court action as required by 28 U.S.C. § 1446(a) in accordance with any post-removal deadlines set by the Court.

13. If any questions arise regarding the propriety of the removal of this action, Defendant respectfully requests the opportunity to present briefing and/or oral argument in support of his position that this case is

removable.

WHEREFORE, Defendant respectfully requests that this Court assume jurisdiction over this action as if Plaintiff had originally commenced this action with this Court.

RESPECTFULLY SUBMITTED this 8th day of August 2022, in
Anchorage, Alaska.

S. LANE TUCKER
United States Attorney

/s/ Seth M. Beausang
Assistant U.S. Attorney
United States of America

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2022,
a copy of the foregoing was served via
U.S. Priority on:

Festus O. Ohan
1280 E. 17th Avenue, #121
Anchorage, AK 99501
Pro se plaintiff

s/ Seth M. Beausang
Office of the U.S. Attorney

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